

EXHIBIT 5

6/27/2006 Arena, Frank - NOVARTIS

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 MDL NO. 1456

4 CIVIL ACTION NO. 01-CV-12257-PBS

5 - - - - - X

6 In Re: PHARMACEUTICAL :

7 INDUSTRY AVERAGE WHOLESALE DEPOSITION OF:

8 PRICE LITIGATION :

9 _____ X FRANK J. ARENA

10 :

11 THIS DOCUMENT RELATES TO:

12 ALL CLASS ACTIONS :

13 - - - - - X

14 HIGHLY CONFIDENTIAL

15 TRANSCRIPT of testimony as taken by

16 and before SEVA FLICSTEIN, Certified Shorthand

17 Reporter, Registered Merit Reporter, Certified

18 Realtime Reporter, a Notary Public of the

19 State of New Jersey, at the offices of Novartis

20 Pharmaceuticals Corporation, One Health Plaza,

21 East Hanover, New Jersey, on Tuesday, June 27,

22 2006, commencing at 9:34 in the forenoon.

6/27/2006 Arena, Frank - NOVARTIS

6/27/2006 Arena, Frank - NOVARTIS

1 Q. And could you tell me for the record how
2 the sales function of Novartis is organized at this
3 point in time?

4 A. We are a national sales organization
5 headed by a senior vice president of sales. We have
6 different sales lines or sales field forces with
7 different names, and they are distributed among
8 eight regional offices across the country.

9 Q. Could you list the regional offices for me?

10 A. They are from east to west, there is an
11 office in Morristown, New Jersey that is responsible
12 for both the Morristown and Boston region. So the
13 two regions operate out of one office there. There
14 is a Raleigh, North Carolina office; an Atlanta,
15 Georgia office; Cincinnati, Ohio; Chicago, Illinois;
16 Dallas, Texas; and San Ramon, California.

17 Q. Can you tell me which of these offices
18 Montana and Nevada fall within? And I realize that
19 could be a compound question.

20 Which of these offices does -- which of these
21 regions does Montana fall within?

22 A. It's my understanding that those states

1 structure of Novartis is there a reporting
2 relationship between marketing and sales?

3 A. They report separately to senior
4 executives who in turn report to the president and
5 chief executive officer.

6 Q. And to whom does the marketing department
7 report?

8 A. Ultimately, today, it reports to Nancy
9 Lurker.

10 Q. And what is Ms. Lurker's position?

11 A. Chief marketing officer.

12 Q. And to whom does the sales department
13 report?

14 A. The general medicines unit reports to Greg
15 Schofield.

16 Q. And are there other divisions within the
17 sales department other than the general medicines
18 unit?

19 A. There are several others. We call them
20 business units. So, for instance, oncology reports
21 separately, not to Mr. Schofield.

22 Q. And to whom does oncology report?

9

11

6/27/2006 Arena, Frank - NOVARTIS

6/27/2006 Arena, Frank - NOVARTIS

1 belong to the San Ramon, California office.

2 Q. Is the sales -- would you call it the
3 sales department or the sales force? Or how
4 internally at Novartis do you refer to the sales
5 organization?

6 A. The sales department, I think, would be
7 adequate.

8 Q. Does the sales department --

9 What is the relationship between the sales
10 department and the marketing department?

11 A. I'm not sure if I understand that
12 question.

13 Q. Is there a regional structure within the
14 marketing department as well?

15 A. No.

16 Q. Is there a -- I'm sorry. Did I interrupt
17 you?

18 A. No. I just wanted to say that the
19 marketing department, as you had indicated, is
20 headquartered here, it is a central function in East
21 Hanover.

22 Q. Is there a -- within the organizational

1 A. From a sales perspective, it reports to
2 Steve Engelhardt.

3 Q. When you say "from a sales perspective,"
4 it raises another question. Is the sales department
5 in addition to being organized regionally, is it
6 also organized by therapeutic class?

7 A. No. It's organized regionally, and then
8 by lines. So we have different field sales
9 organizations with different names that carry
10 certain brands.

11 Q. And we may get into that a little bit
12 later. I am just trying to understand the structure
13 of Novartis and the sales and marketing area
14 specifically so we can be as efficient as possible
15 today.

16 A. Okay.

17 Q. How many employees are there within the
18 sales department of Novartis?

19 A. The approximate number is about 6200.

20 Q. Can you tell me what the different
21 functions of the people are generally?

22 A. I can. I guess starting with the sales

1 representative, the function of the sales
 2 representative would be to deliver the approved
 3 sales message to the healthcare prescribers across
 4 the country.

5 The sales representatives report to a first
 6 line manager, sometimes referred to as a district
 7 manager.

8 That role provides guidance, feedback,
 9 supervision, and ensures compliance with the
 10 delivery of the message by the sales representative.

11 The first line manager in turn reports to a
 12 second line manager, usually referred to as a
 13 regional sales director. That role similarly for
 14 management provides coaching, feedback, guidance,
 15 and ensures compliance with the delivery of the
 16 message.

17 And ultimately, the regional sales directors
 18 report to a vice president of sales, a divisional
 19 vice president of sales, who in turn report to the
 20 head of sales.

21 Q. You described your title as vice
 22 president, sales operations?

1 A. We have national responsibility for not
 2 only general medicines, but in most cases we support
 3 the other stand-alone business units that I
 4 mentioned earlier, like oncology.

5 Q. How -- that's not a good question.
 6 How do the marketing and sales departments
 7 work together?

8 MR. GODLER: The question is, Do they work
 9 together?

10 Q. (BY MS. BRECKENRIDGE:) A better question
 11 is, Do they work together?

12 A. Yes. They work together in the way that
 13 the marketing department is accountable for the
 14 strategy, as I mentioned earlier, and the
 15 development of the core selling message, which goes
 16 through an approval process involving medical,
 17 legal, and regulatory authorities.

18 Once that message has been tested and
 19 approved by that process, it is turned over to the
 20 sales organization, along with the supporting or
 21 collateral materials, such as the visual aid or the
 22 selling brochure.

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6/27/2006 Arena, Frank - NOVARTIS

6/27/2006 Arena, Frank - NOVARTIS

1 A. Yes.

2 Q. How does that fit into the sales
 3 organization?

4 A. My department and my role is a support
 5 function to the field selling organization. So we
 6 provide service.

7 Q. Could you describe to me what type of
 8 services your department provides to the sales
 9 organization?

10 A. Yes. It's fairly broad services,
 11 including sample management. So under sales
 12 operations would be sample ops. We provide the call
 13 reporting system or the SFA system, sales force
 14 automation. We provide all outbound field
 15 communications. We support the field force through
 16 the awards and recognition program. And we also are
 17 involved in supporting the customer meetings and
 18 events that Novartis would sponsor at the local
 19 level.

20 Q. And Mr. Arena, does your department cover
 21 the entire country? Or are you assigned to a
 22 particular region or regions?

1 And then the sales organization receives
 2 extensive training on the materials and the delivery
 3 of the core selling message through either classroom
 4 training or at promotional planning meetings where
 5 the representatives are basically certified on their
 6 knowledge and their ability to deliver the message
 7 to healthcare prescribers.

8 Q. Is it the marketing department that
 9 provides the extensive training to the sales
 10 organization?

11 A. Actually, it's provided by our sales
 12 training department that puts together the
 13 appropriate resources. And that training presents
 14 itself in a number of ways: in-person classroom
 15 training, online computer training, and at meeting
 16 practice selling and delivery of the sales message.

17 Q. You mentioned visual aids that are the
 18 product of the marketing department work. Is it the
 19 marketing department who puts together the visual
 20 aids?

21 A. It's their -- one of their primary
 22 responsibilities, to assemble the visual aid.

14

16

1 Q. How long has the sales and marketing
2 departments been organized in this way, starting
3 with the marketing department?
4 How long has the marketing department been
5 organized in the manner you described for the
6 record?
7 A. That's a little bit difficult for me to
8 reflect on, because we've had different
9 organizational structures over the years. But if I
10 can say, it's been at least five years or so that
11 it's been structured this way, perhaps longer.
12 Q. Is that the same for the sales department?
13 A. Yes.
14 Q. You described what the function of your
15 department is, and you mentioned the call reporting
16 system. Can you explain what the call reporting
17 system is?
18 A. Each of our sales representatives are
19 equipped with a hand-held device and a laptop
20 computer. And the call reporting requirement is to
21 ensure that each and every physician call that's
22 made is logged on either through the hand-held

1 same physician.
2 Q. What is a pod?
3 A. A pod is the way in which a territory is
4 configured with several representatives accountable
5 for the same geography and, in many cases,
6 overlapping physician target customers.
7 Q. Is it the case, then, that different sales
8 representatives are representing different products,
9 then, within the Novartis line?
10 A. They are.
11 Q. Who heads up the sales department at
12 Novartis, the ultimate top of the line?
13 A. That would be Greg Schofield, senior vice
14 president and general manager of North America.
15 Q. Do you know approximately how many
16 employees fall within the marketing department?
17 A. I actually don't know the number of
18 marketing associates.
19 Q. Do you know the functions, the job
20 functions, within the marketing department?
21 A. Generally, I do.
22 Q. Could you describe those for me, please?

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6/27/2006 Arena, Frank - NOVARTIS

1 device or through the laptop computer.
2 And what is captured are the following key
3 pieces of information:
4 The products that are promoted in that sales
5 call; the samples that are left and signed for by
6 the prescriber; and any action items or talking
7 points that are significant that would justify a
8 follow-up visit or activity on the part of the
9 representative is also recorded.
10 Q. What happens to the -- is that narrative
11 considered a call report?
12 A. It's considered a post-call note.
13 Q. And what happens to the post-call note?
14 Where is it distributed?
15 MR. GODLER: I'm sorry. What was the
16 question?
17 Q. What happens to the post-call note?
18 A. The post-call note is available to the
19 representative for future calls. It's available to
20 be reviewed by his or her first line manager. And
21 it's also available to counterpart or pod mates,
22 that would be other representatives calling on that

6/27/2006 Arena, Frank - NOVARTIS

1 A. Starting with the brand team, there's
2 usually a brand director who is the accountable
3 person for managing the entire brand P & L
4 statement.
5 Reporting to the brand director are usually
6 several brand managers and or assistant brand
7 managers that are accountable for the development of
8 support materials. They work together as a team in
9 the development of the overall brand strategy.
10 The brand teams are supported by market
11 research analysts that assist them in conducting
12 primary and secondary research to better understand
13 customer insights and to help in formulating the
14 overall marketing annual business plan.
15 There are, in addition, promotional managers
16 who work very closely with the brand teams as well
17 in developing the tactics that would support some of
18 the strategies.
19 Q. When you use the term "tactic," can you
20 describe that for me or give me an example?
21 A. Tactic might include the actual visual
22 aid. It might include a reminder piece, such as a

1 simple pen or scratch pad. It might also include a
 2 clinical reprint that would substantiate the safety
 3 and efficacy of the drug -- of the branded drug in
 4 question.

5 Q. Who is ultimately responsible for the
 6 marketing strategy for a particular product?

7 A. For a particular product, I believe it
 8 would be the brand director. The brand director
 9 reports to the therapeutic franchise head.

10 Q. Does the marketing department take into
 11 consideration drug pricing as part of their
 12 determination of the brand strategy?

13 A. They will make a recommendation to the
 14 senior management committee on pricing, yes. So
 15 pricing is one of the areas that they will address.

16 Q. Do you know what types of research they do
 17 to reach their pricing recommendation?

18 A. I do so only very generally.

19 Q. Could you describe your general
 20 understanding of that research that goes into the
 21 pricing recommendation?

22 A. Much of it is relative to competitive

1 point.

2 Q. No. But I'm beginning to realize how
 3 broad my question was.

4 A. Right.

5 Q. Is there -- would the answer be the same
 6 for the sales department?

7 A. Similar.

8 MR. GODLER: The answer would be the same
 9 for -- what would be the question that you are
 10 referring to the answer would be the same?

11 Q. (BY MS. BRECKENRIDGE:) I am referring to
 12 what departments does the sales department work with
 13 regularly?

14 A. I think my response would be similar. But
 15 my experience is that marketing has more engagement
 16 or involvement cross-functionally than does sales.

17 Q. Is there a pricing department within
 18 Novartis?

19 A. There is a group. I don't know if it's a
 20 full department. But there is a group that is
 21 accountable for pricing.

22 Q. What is the name of the group?

21

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6/27/2006 Arena, Frank - NOVARTIS

1 benchmarking in the same therapeutic area and
 2 assessing the benefits of our product, the efficacy
 3 of our product, the safety of our product vis-a-vis
 4 competitors and what competitors are currently
 5 pricing their agents at.

6 Q. Would that competitive benchmarking be the
 7 responsibility of the marketing department?

8 A. Yes.

9 Q. Do you know where the marketing department
 10 obtains their data or information for their
 11 competitive benchmarking?

12 A. Not precisely, no.

13 Q. Are there other departments that work with
 14 -- I'll withdraw that question.

15 What other departments work directly with the
 16 marketing department?

17 A. Many other departments work with the
 18 marketing department, including our own sales,
 19 production planning, regulatory, legal, IT.

20 Q. Is there a government affairs department?

21 A. Government affairs, thank you,
 22 development. I must have said medical at this

6/27/2006 Arena, Frank - NOVARTIS

1 A. I'm not sure that I actually know the
 2 current terminology or title of that department.

3 Q. Do you recall any past titles of the
 4 department?

5 A. I don't.

6 Q. Where are they geographically located?

7 A. In East Hanover.

8 Q. Do you know approximately how many
 9 employees are within that department?

10 A. I do not, no.

11 Q. Do you know who heads up that department?

12 A. I believe it reports to finance.

13 Q. Do you know how the department is
 14 organized?

15 A. I do not, no.

16 Q. In your function as vice president of
 17 sales operations do you have direct dealings with
 18 the pricing department?

19 A. I do not. This is --

20 Q. And I'm using "pricing department" as
 21 small "p," small "d." I understand that is likely
 22 not the title.

22

24

1 Do you know Doug Fast?

2 A. I do not.

3 Q. Are you familiar with a job function known

4 -- or job title known as the ReadyPrice product

5 manager?

6 A. I'm not familiar with that at all, no.

7 Q. There is a reference on the first page to

8 Fosamax. Is that a Novartis product?

9 A. It is not.

10 Q. And further down in the same paragraph --

11 Do you know who the manufacturer of Fosamax

12 is?

13 A. I believe it's Merck.

14 Q. Do you know if Fosamax -- is there a

15 competitor for Fosamax within the Novartis line of

16 pharmaceuticals?

17 A. I believe the competitor would be

18 Miacalcin.

19 Q. And then the next question is Sporanox,

20 are you familiar with a product known as Sporanox?

21 A. I am.

22 Q. Is that a Novartis product?

65

6/27/2006 Arena, Frank - NOVARTIS

1 A. It is not.

2 Q. Do you know who manufactures that product?

3 A. I believe it is Janssen Pharmaceuticals.

4 Q. Is there a Novartis competitor for

5 Sporanox?

6 A. There is.

7 Q. And what is that product?

8 A. Lamisil.

9 Q. Is this the type of competitor pricing

10 information that you've used during your career?

11 A. No, I've never used this pricing

12 competitive information.

13 Q. Have you ever used competitive pricing

14 information of any type in your career?

15 A. Yes.

16 Q. So when you say I've never used this type

17 of pricing information, what do you mean?

18 A. The pricing information that has been used

19 -- that I have personally been aware of, used, and

20 knowledgeable about deals with pricing to the

21 patient.

22 And it is generally in a -- sort of in a

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1 general way stated that the Novartis product --

2 whatever the product might be in question -- is --

3 and I'll use the term competitively priced to other

4 brands in that same therapeutic area.

5 So it is not specific in terms of dollars or

6 cents, generally. And it is all about pricing to

7 the end user, the patient, the consumer.

8 Q. And where would you get that type of

9 information?

10 A. Generally, that kind of information would

11 be provided by the home office.

12 Q. Is it still provided to this day?

13 A. There may be reference that particular

14 product is, again, competitively priced to another

15 product within that category. And that might be a

16 statement that a sales representative would be able

17 to deliver today.

18 But it's only delivered if it's provided by

19 East Hanover through the message core team review

20 and approval process that we talked about earlier,

21 and authorized for the representative to deliver.

22 It is not that the rep or the first line

67

6/27/2006 Arena, Frank - NOVARTIS

1 manager develops that locally in the field.

2 Q. And that was my follow-up question.

3 To your knowledge, does the rep in the field

4 working locally or regionally collect information

5 even anecdotally regarding competitor prices?

6 A. They are not authorized to do so. It is

7 not to my knowledge that it is done. And we

8 instruct all of our representatives and first line

9 managers under those ethics and compliance courses

10 that we talked about before that they are not to in

11 any manner, shape or form to modify, change or

12 develop material in the field that has not been

13 approved through East Hanover and given to them

14 directly from East Hanover.

15 Q. Is there a particular policy that relates

16 to this instruction that you just described?

17 A. Yes.

18 Q. And what is that policy?

19 A. I'm not sure that I know the name of a

20 policy. But every new hire --

21 Q. I can ask a different question.

22 A. Okay.

68

1 Q. Even I thought that was an objectionable
 2 question.
 3 MR. GODLER: See, I let you ask it anyway.
 4 Q. Is this a written policy?
 5 A. Yes.
 6 Q. And where would it be written?
 7 MR. GODLER: Where is it written?
 8 MS. BRECKENRIDGE: Yes.
 9 A. It's in the policy manual. But I think
 10 more importantly, it's a policy that all new hires
 11 are trained on. And we remind our sales associates
 12 of this policy generally on an annual basis if not
 13 more frequently.
 14 Q. And understanding that you can't quote it
 15 verbatim, can you describe for me what the policy
 16 is?
 17 A. There is a shorthand term which may mean
 18 nothing to a lay person, but it is the use of
 19 homemade bread.
 20 Q. Okay.
 21 A. And so -- and homemade bread is in quotes,
 22 right. And it suggests very clearly that the use of

1 sales representative either taking claims out of
 2 context or using nonapproved materials in the
 3 promotion of a Novartis product.
 4 Q. Is there a particular committee that deals
 5 with breaches of this policy?
 6 A. They are generally reported to the ethics
 7 and compliance, and handled by our human resources
 8 department, along with security.
 9 Q. Do you know if that employee was
 10 terminated?
 11 A. Yes.
 12 Q. And was that employee terminated?
 13 A. Yes.
 14 Q. Did the representations that the employee
 15 made -- I'm sorry.
 16 Did the action that the employee took relate
 17 to a particular Novartis product?
 18 A. Yes.
 19 Q. And what was that product?
 20 A. I believe it was Diovan.
 21 Q. I am going to ask you to excuse me for a
 22 minute, I need to turn down my air-conditioner.

69

71

6/27/2006 Arena, Frank - NOVARTIS

1 homemade bread -- meaning that any alteration,
 2 modification, change or adjustment to an approved
 3 sales aid -- will result in immediate disciplinary
 4 action up to and including termination.
 5 Q. How long has that been the policy, Mr.
 6 Arena?
 7 A. It has been the policy of our company as
 8 long as I can remember. Clearly it's been our
 9 policy over the 10 years of the Novartis history
 10 since 1997.
 11 And I know from the heritage company of Ciba
 12 Geigy, it was also a policy there.
 13 Q. Are you aware of any instances where -- in
 14 which employees have been disciplined for breaching
 15 this policy?
 16 A. I am.
 17 Q. And is there a way to describe -- when was
 18 the last time that you are aware of?
 19 A. Probably in the last 12 months or so.
 20 Q. Can you describe to me generally what the
 21 nature of the breach was?
 22 A. Yes. Just generally, it relates to a

6/27/2006 Arena, Frank - NOVARTIS

1 I would like to ask the court reporter to
 2 pull out what I previously marked as Exhibit 13 in
 3 her pile, Bates numbers NPC-MNT 1033 through 1035.
 4 And this is our second exhibit, not to be confusing.
 5 (Exhibit Arena 002, Documents Bates
 6 stamped NPC-MNT 1033 through 1035, was marked for
 7 identification.)
 8 Q. (BY MS. BRECKENRIDGE:) You can hand the
 9 exhibit to Mr. Arena, please.
 10 Mr. Arena, if I can ask you to take a moment
 11 to look at this document. And I will have a few
 12 questions to ask you about it.
 13 A. I'm ready.
 14 Q. Thank you. I have a few questions for
 15 you.
 16 Have you ever seen this document before, Mr.
 17 Arena?
 18 A. I don't believe I have.
 19 Q. Have you seen documents similar to this
 20 document?
 21 A. Yes.
 22 Q. Is this an example of the broadcast fax

70

72

6/27/2006 Arena, Frank - NOVARTIS

6/27/2006 Arena, Frank - NOVARTIS

1 Q. You mentioned earlier Novartis policies.
 2 Does Novartis have a policy on tracking competitor
 3 information?
 4 A. A policy on that? Not that I'm aware of.
 5 Q. Are you familiar with the term "spread" in
 6 connection with drug pricing?
 7 A. I've seen it in the Pink Sheet and in the
 8 press.
 9 Q. What's the Pink Sheet?
 10 A. It's an industry-wide newsletter that
 11 speaks about what's happening in the industry and
 12 with specific companies.
 13 Q. What do you recall about the term "spread"
 14 in the Pink Sheets?
 15 A. Going back some time there was an article
 16 or two about certain companies or drugs that were
 17 using the spread between the acquisition cost and I
 18 think AWP, and using that for the advantage of
 19 somebody. I don't remember the specifics.
 20 Q. Do you recall which companies were
 21 mentioned?
 22 A. No, I actually don't.

1 the pharmacist. In some cases even the patient is
 2 the ultimate customer of the Novartis product. As
 3 well as wholesalers, retail chains, institutions. I
 4 mean, it's a very long list of potential customers.
 5 Q. Now, among that list of what is referred
 6 to as potential customers, to which of those
 7 entities does Novartis sell its products directly?
 8 A. I think that's much clearer and limited,
 9 in that it's usually the wholesaler when we're
 10 talking about the customers that are buying product.
 11 Would be wholesalers and direct chain -- retail
 12 chain accounts.
 13 Q. And are you aware of Novartis selling
 14 directly to any of the other entities that you
 15 listed when you referred to who Novartis considers
 16 its customers to be?
 17 A. I am not.
 18 Q. Now, you also used the term "competitive
 19 benchmarking."
 20 A. Uh-huh.
 21 Q. Can you explain what you mean by the term
 22 "competitive benchmarking"?

149

151

6/27/2006 Arena, Frank - NOVARTIS

6/27/2006 Arena, Frank - NOVARTIS

1 MS. BRECKENRIDGE: I don't have any
 2 further questions.
 3 MR. GODLER: Actually, I do have a few
 4 questions for cross-examination.
 5 -----
 6 Examination
 7 -----
 8 BY MR. GODLER:
 9 Q. Mr. Arena, earlier you -- there was
 10 testimony about Novartis's customers. I would like
 11 to ask you, how do you define the term "customers"
 12 in connection with Novartis Pharmaceuticals
 13 products?
 14 MS. BRECKENRIDGE: I am sorry. I couldn't
 15 hear the first part of the question.
 16 (Record read.)
 17 A. I think that's a great question because we
 18 have a big debate around here regarding who are the
 19 customers.
 20 Customers when we refer to them as such is a
 21 very broad term, and it may include from the
 22 physician prescriber to the nurse practitioner to

1 MS. BRECKENRIDGE: Objection; asked and
 2 answered.
 3 Q. (BY MR. GODLER:) You can go ahead and
 4 answer.
 5 A. Again, that's a very broad term. And we
 6 use it to capture and to report on many different
 7 things.
 8 So, for instance, we may have mentioned
 9 earlier that we are always interested in what our
 10 competitors are doing with regard to physician
 11 meetings and events. So that would be some
 12 competitive benchmarking or competitive
 13 intelligence.
 14 We are interested in the number of sales
 15 calls that our competitors are making against
 16 certain physician groups, if you will, or
 17 specialties. That would be competitive
 18 benchmarking.
 19 We are interested in the distribution of
 20 samples and the number of samples that our
 21 competitors may be giving in a particular
 22 therapeutic area. So that would be competitive

150

152

6/27/2006 Arena, Frank - NOVARTIS

6/27/2006 Arena, Frank - NOVARTIS

1 benchmarking.

2 Q. Is there anything else that you would put

3 into the category of competitive benchmarking?

4 A. I am sure there are other things. Again,

5 it's a very broad term.

6 Q. Now, there was also some testimony

7 regarding the fact that Novartis might -- Novartis

8 at times refers to the fact that its products are

9 competitively priced.

10 Do you recall that testimony?

11 A. I do.

12 Q. And there was also testimony regarding

13 premium pricing?

14 A. Uh-huh.

15 Q. Are there situations that you are aware of

16 where Novartis products are premium priced because

17 that is what competitors have priced their products

18 at?

19 A. Uh-huh. Yes. I am aware of a situation

20 perhaps where there's only one other competitor on

21 the market and that product is at a premium price.

22 And Novartis would want to be competitive, and

153

6/27/2006 Arena, Frank - NOVARTIS

1 therefore, price its product within the general

2 pricing area of that competitor.

3 So, therefore, by extension, Novartis might

4 be premium priced.

5 Q. And now, if you wouldn't mind taking a

6 look at what was marked as Exhibit Arena 002.

7 And if I could direct your attention --

8 I think you testified that this is an example

9 of the form of a broadcast fax. Is that correct?

10 A. Yes.

11 Q. If I could direct your attention to the

12 middle of the page where the asterisk is.

13 A. Uh-huh.

14 Q. If you wouldn't mind reading that section

15 into the record.

16 A. "As used in the attached price list, the

17 term AWP, or average wholesale price, constitutes a

18 reference for each Novartis product set as a

19 percentage above the price for which each product is

20 offered generally to wholesalers. Notwithstanding

21 the inclusion of the term 'price' in 'average

22 wholesale price,' AWP is not intended to be a price

154

1 charged by Novartis for any product to any

2 customer."

3 Q. And Mr. Arena, do you know when that

4 statement began appearing in Novartis's broadcast

5 faxes?

6 A. Well, to my recollection, this disclosure

7 has been part of all of the documents since the

8 beginning of Novartis, which would be January 1997.

9 Q. Now I would like you to take a look at

10 what was previously marked --

11 MS. BRECKENRIDGE: I can't hear, Counsel.

12 Q. (BY MR. GODLER:) I would like you to take

13 a look at what was previously marked Arena Exhibit 8.

14 If I could direct your attention to page 3 of

15 Exhibit 8, which is a memo dated June 20, 2002 to

16 Neil Jones from Ronda McClary.

17 Do you see that?

18 A. Yes.

19 Q. I think you testified that you had not

20 seen this document before. Is that correct?

21 A. Yes.

22 Q. Do you know what this document was used

155

6/27/2006 Arena, Frank - NOVARTIS

1 for?

2 A. No, I don't.

3 Q. Do you know what the purpose of Ms.

4 McClary sending it to Neil Jones was?

5 A. I do not.

6 Q. Have you ever had any discussions or

7 conversations with either Ms. McClary or Mr. Jones

8 about this or any other document?

9 A. No.

10 Q. Now, you also -- you testified about the

11 training that the field sales force receives with

12 respect to the types of statements that they can

13 make.

14 Are you aware of anyone on the field sales

15 force ever being directed that they -- that it was

16 permissible to make statements regarding any

17 reimbursement that was available for Novartis

18 pharmaceutical products?

19 A. No.

20 Q. Are you aware of any statements regarding

21 the reimbursement for Novartis pharmaceutical

22 products being the part of any marketing plan?

156

1 A. No.
2 Q. Are you aware of the reimbursement for
3 Novartis pharmaceutical products being the part of
4 any vis aid used in connection with any Novartis
5 pharmaceutical products?

6 A. No.
7 MR. GODLER: I have no further questions.
8 MS. BRECKENRIDGE: I have a few follow-up
9 questions.

10 -----
11 FURTHER EXAMINATION
12 -----

13 BY MS. BRECKENRIDGE:

14 Q. Returning to Exhibit Arena 002, the
15 section that your lawyer referred you to regarding
16 the average wholesale price and the attached price
17 list, is that the attached price list above this
18 paragraph?

19 A. Can we restate the question?

20 Q. Yes. Where is the attached price list
21 related to this e-mail?

22 A. The only prices here are for one product:

1 Q. Do you know who within Novartis, whether
2 by name, title or department, is responsible for
3 setting average wholesale prices?

4 A. The only thing I could offer would be the
5 pricing group that we've talked about before. But I
6 don't know anybody specifically.

7 MS. BRECKENRIDGE: I have no further
8 questions.

9 (Time noted: 2:42 p.m.)

10 (Exhibits were retained by the
11 Certified Shorthand Reporter.)

12

13

14

15

16 Sworn and subscribed to before me on this ____ day
17 of _____, 2006.

18

19 NOTARY PUBLIC _____

20

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157

159

6/27/2006 Arena, Frank - NOVARTIS

6/27/2006 Arena, Frank - NOVARTIS

1 Lescol.
2 Q. So it appears from this e-mail, then, that
3 Novartis is reporting average wholesale prices
4 directly to wholesalers; is that correct?

5 MR. GODLER: Objection.

6 Q. (BY MS. BRECKENRIDGE:) You can answer.

7 A. What is your question? I'm sorry,
8 Counsel.

9 Q. My question is, In this e-mail is Novartis
10 reporting average wholesale prices to wholesalers
11 directly?

12 A. I actually can't -- it's notice of price
13 adjustment, it says, to third party journals. I
14 don't know what that is.

15 Q. Do you know how Novartis sets average
16 wholesale prices?

17 MR. GODLER: I'm sorry. I don't think we
18 could hear your question.

19 Q. (BY MS. BRECKENRIDGE:) Do you know how
20 Novartis sets average wholesale prices?

21 A. I do not know the mathematical formula,
22 no.

C E R T I F I C A T E

2 I, SEVA FLICSTEIN, a Certified Shorthand Reporter
3 and Notary Public of the State of New Jersey, do hereby
4 certify that prior to the commencement of the examination
5 the witness was sworn by me to testify the truth, the
6 whole truth and nothing but the truth.

7 I DO FURTHER CERTIFY that the foregoing is a true
8 and accurate transcript of the testimony as taken
9 stenographically by and before me at the time, place and
10 on the date hereinbefore set forth.

11 I DO FURTHER CERTIFY that I am neither of counsel
12 nor attorney for any party in this action and that I am
13 not interested in the event nor outcome of this
14 litigation.

15

16 New Jersey Certificate No. XI 01413

17 California Certificate No. 8727

18 Registered Merit Reporter

19 Certified Realtime Reporter

20 Notary Public of the State of

21 New Jersey

22 My commission expires 6/26/2007

158

160